REMARKS

By this Preliminary Amendment, Applicants have amended claims 44, 51, 53, 72, and 82 to overcome the objections to the claims.

The Examiner has indicated that claim 46 is generic. Applicants indicate that claim 49 reads on the elected species. Applicants traverse the election of species requirement on the grounds that the Office has not shown that there would be a **serious** burden to examine all of the recited species of hydrophilic polymers of different monomers. Accordingly, Applicant respectfully requests that all the recited species continue to be examined in this application.

Applicants respectfully submit that he has a statutory right under 35 U.S.C. § 112, second paragraph, to claim the subject matter he regards as his invention as he chooses. Issuing a restriction requirement within a claim with the idea that Applicants would have to carve up that claim and pursue the nonelected subject matter in a separate application violates this right under section 112. Indeed, the C.C.P.A. has characterized such action as tantamount to a refusal to examine. *See In re Weber,* 198 U.S.P.Q. 328 (C.C.P.A. 1978); *In re Haas,* 198 U.S.P.Q. 334 (C.C.P.A. 1978).

35 U.S.C. § 121 gives the Examiner authority to promulgate rules designed to restrict an application to one of several claimed inventions when those inventions are found to be independent and distinct. 35 U.S.C. § 121, however, does not give the Examiner authority to reject a particular claim on that basis. *Weber* at 332.

Accordingly, Applicants respectfully request that all the claimed species of hydrophilic polymer of different monomers continue to be examined in this application.

If the Office chooses, however, to maintain the election of species requirement, Applicants expect that the Office, if the elected species is found allowable, to continue to examine the full scope of claims 46-50 to the extent necessary to determine the patentability of these pending claims, i.e., extending the search to a reasonable number of the non-elected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

Applicants file concurrently herewith a Petition for Extension of Time (of three month) thereby extending the period for response to April 7, 2008.

No additional fee is believed necessary with this submission. However, if it is determined otherwise, the Director is hereby authorized to charge any additional fees or credit any overpayment to our Deposit Account 50-2961. Please grant any additional extensions necessary to maintain the pendency of this application.

Respectfully submitted,

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By: Carol L. Cole
Carol L. Cole
Reg. No. 43,555